ORDINANCE NO. 2025-13

AN ORDINANCE TO GRANT A NON-EXCLUSIVE FRANCHISE TO LUMOS FIBER OF ALABAMA, LLC

BE IT ORDAINED by the City Council of the City of Irondale, Alabama, in regular meeting duly assembled with a quorum present, as follows:

SECTION 1: ***Amendment to Chapter 5, Business Regulations of The Code of Ordinances, City of Irondale, Alabama.*** Chapter 5, Business Regulations of *The Code of Ordinances, City of Irondale, Alabama* ("Code") is hereby amended to add "Article IX. – *Franchises"* as follows:

Article IX. Franchises

Section 5-302. – Franchise: Lumos Fiber of Alabama, LLC, is wholly owned by Gridiron Fiber License, LLC.

(a) **Definitions.** The words "the City" as used herein mean the City of Irondale in the State of Alabama, as it is now constituted and as it may hereafter be extended or enlarged. The words "Franchisee" as used in this division shall mean Lumos Fiber of Alabama, LLC.

(b) **Franchise Granted; Term.** There is hereby granted to **Franchisee**, the non-exclusive and limited authority to construct, maintain, and operate a fiber-based communications system in, over, under, across, and through the public rights-of-way in the City and any future additions thereto. The grant of this non-exclusive franchise is for the use by the Franchisee for the purpose of providing telecommunication and communications services, including dark fiber, within the City as a "competitive access provider" which directly connects customers within the franchise area with other businesses, local area networks, a local exchange carrier and interexchange carriers and for such other services, including local exchange and enhanced services, as may be authorized by the Alabama Public Service Commission ("PSC") or federal law, other than cable services as defined below. Franchisee shall not provide services directly regulated by the PSC unless authorized by the PSC. Franchisee is permitted to operate a telecommunications system as defined by the Telecommunications Act of 1996. Franchisee shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521 et seq., as amended) without first having obtained a separate cable franchise with the City.

This franchise is granted to **Franchisee** for an initial term of ten (10) years, unless such franchise is lawfully revoked or terminated as

provided in the Franchise Agreement between the City and Franchisee, and may be renewed thereafter upon mutual agreement of the Franchisee and the City, provided that statutory authority exists for the City to renew this franchise. This franchise shall take effect on the later of either the date of publication of the franchise ordinance authorizing the franchise or the date of execution of the franchise agreement by all parties thereto.

(c) **Limitations of Franchise.**

(1) **Non-Exclusive Franchise Granted Herein.** Nothing in this Section shall be construed as granting to the Franchisee an exclusive franchise for the purpose set forth in this Section. Identical or similar franchises may be granted by the City to more than one person or entity, within all or any portion of the City.

(2) **Subject to exercise of the City's police power.** The Franchisee shall, at all times during the life of the franchise, be subject to the lawful exercise of the City's police power, and must strictly adhere to the City's laws, ordinances and such reasonable regulations as the City Council may subsequently promulgate thereunder. The City reserves the right to make reasonable rules, regulations and restrictions for the protection of persons using the streets, avenues, alley and/or other public places in the City from injury.

(3) **Prior lawful occupancy of the streets.** Any privileges prescribed by this Section shall be subordinate to any prior lawful occupancy of the City's rights-of-way.

(d) **Franchise Terms.** The specific terms of this franchise shall be set forth in a separate franchise agreement to be executed between the City and the Franchisee.

SECTION 2. ***Execution of a Franchise Agreement with Franchisee.*** The granting of this franchise is contingent upon the execution by Franchisee of a franchise agreement with the City for a fiber-based communications system. The Mayor is hereby authorized to execute a Franchise Agreement with Franchisee in substantially the form attached hereto as Exhibit A.

SECTION 3. ***Legal Rights Not Impaired.*** That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 5. ***Severability.*** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clauses and phrases thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional. Any provision found herein to be in direct contravention with state law or federal law either presently existing or enacted after the date of passage of this Ordinance shall be superseded by such law and rendered unenforceable without effect to those provisions found herein that are no in contravention with state and/or federal law.

SECTION 6. ***Effective Date/Publication and Costs Therefor.*** This Ordinance will become effective upon publication. This Ordinance shall be published by the City in accordance with the applicable provisions of Section 11-45-8 of the *Code of Alabama* (1975). All costs of publication shall be paid by the Franchisee.

David Spivey, City Council President

APPROVED:

James D. Stewart, Jr., Mayor

ATTESTED:

Leigh Ann Allison, City Clerk

CERTIFICATION

I, Leigh Ann Allison, City Clerk of the City of Irondale, Alabama, hereby certify that the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Irondale at its regular meeting held on September 16, 2025, as same appears in the minutes of record of said meeting.

Leigh Ann Allison, City Clerk

Exhibit A

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT, by and between the **CITY of IRONDALE, ALABAMA**, a municipal corporation (hereinafter referred to as the "City"), and **Lumos Fiber of Alabama, LLC**, an Alabama limited liability company, whose address is **4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265** (hereinafter referred to as the "Franchisee").

WHEREAS, the City has and reserves the right to exercise control over the highways, streets, alleys and public places and to require City's consent prior to using such highways, streets, alleys and public places; and

WHEREAS, State law confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

WHEREAS the Franchisee has requested from the City a franchise to use the streets and public ways of the City to construct, maintain and operate a Telecommunications System (as defined in Section 1(b)) to provide the Services (as defined in Section 1(b)); and

WHEREAS the City and the Franchisee have negotiated this Franchise Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and the Franchisee enter into this Franchise Agreement and agree as follows:

SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE.

(a) A non-exclusive franchise is hereby granted to the Franchisee to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City, a Telecommunications System to provide the Services within the City and any future additions thereto. The grant of this non-exclusive franchise is for the use by the Franchisee for the purpose of providing the Services, including dark fiber, within the City as a "competitive access provider" which directly connects customers within the City with other businesses, local area networks, a local exchange carrier and interexchange carriers and for such other telecommunications-related services, including, but not limited to local exchange and enhanced services, as may be authorized by the Alabama Public Service Commission ("PSC") or federal law, but excluding Cable Services over a Cable System (as both terms are defined in the Cable Communications Policy Act of 1984, as amended (47 USC §521 *et seq.*) (the "Cable Act"). The Franchisee shall not operate a Cable System or provide Cable Services in the City without first having obtained a separate cable franchise or video services agreement from the City. The Franchisee shall not provide services directly regulated by the PSC unless authorized by the PSC to do so. The Franchisee is permitted to operate a "Telecommunications System," defined as Franchisee's Facilities (as defined in Section 1(d)) within the City consisting of a set of fiber optic cables and associated signal generation, reception and control equipment or other communications equipment and facilities used to provide the Services to subscribers in the City.

(b) As used herein, the term "Telecommunications Service" has the meaning given to it by the Communications Act of 1934, as amended (47 U.S.C. § 153) (the "Communications Act"), but excludes Other Services. The term "Other Services" means "information services," as defined in the Communications Act, as well as other communications services, but excluding Cable Service, lawfully provided by the Franchisee in addition to and separate from Telecommunications Services, including, without limitation, private network services, broadband services, Internet access services, voice mail, call waiting, call forwarding, conference calling, voice-over-Internet-protocol, dark fiber and distance learning services. The term "Services" means, collectively, Telecommunications Services and Other Services. The Services do not include Cable Services. The Franchisee shall not operate a Cable System or provide Cable Service within the City without first having obtained a separate cable franchise or video services agreement from the City.

(c) This franchise shall continue in full force and effect for an initial term of ten (10) years (the "Initial Term") beginning on the Effective Date (as defined in Section 31), and the Initial Term of this Franchise Agreement shall be renewed automatically for one (1) successive term of ten (10) years (the "Renewal Term" and collectively with the Initial Term, the "Term"), on the same terms and conditions set forth herein, provided that statutory authority shall exist for the City of Irondale to renew this franchise. New terms and conditions may be required by either party for the Renewal Term if the telecommunications and broadband technology and rights-of-way laws change after the Effective Date of this franchise ordinance and such change substantially affects service types, availability, character of service, system technology, franchise fees or the regulatory environment. New terms, provisions, or conditions may also be negotiated by either party for the Renewal Term which are applicable generally to other franchisees for similar services or applicable generally to the industry to clarify the intent of this franchise, which may arise from any unforeseen circumstances or interpretations of this franchise, and/or which are based on the history of performance of the Franchisee. The parties agree to negotiate new terms and conditions in good faith. Nothing in this Section is intended to expand or contract any rights that the Franchisee may have as a matter of state or federal law to obtain a franchise from City. Any further renewals shall be in accordance with applicable laws.

(d) When used herein, the term "Facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, fiber optic wires, wires, telecommunications, amplifiers, electronics, transmission and reception equipment, supporting hardware, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the Franchisee's Telecommunications System and located within the City's rights of way. For the purposes of this Franchise Agreement, the term Facilities excludes "microcell" facilities, "small cell facilities," "macro cell" facilities, and other similar wireless facilities, including towers and new base stations and other similar facilities used for the provision of "personal wireless services" as such terms are defined in the Communications Act and in the City's Small Cell Ordinance, as amended.

SECTION 2. GENERAL TERMS. The Franchisee, for the Term of this franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate and maintain Facilities and to make any and all necessary excavations therefor, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City, and to utilize, with permission of the affected utility companies, their facilities within public rights-of-way for the purpose of installing and operating a Telecommunications System within the City, to

be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and the Franchisee shall be subject to and shall comply with all laws and ordinances of the City and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City set forth herein. The granting of this franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

SECTION 3. SCOPE OF FRANCHISE. The franchise hereby granted shall extend to and include all portions of streets, alleys, avenues and other public ways that conform to the General Terms set forth in Section 2, above, as may be necessary to carry out the purpose of this franchise.

SECTION 4. INDEMNIFICATION. (a) The Franchisee hereby agrees to indemnify, defend and hold harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees (collectively, the City's "Representatives") and insurance carriers, individually and collectively, from all losses, damages, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature (collectively, "Losses") resulting from the Franchisee's or its agent's or contractor's installation, operation, repair or maintenance of the Telecommunications System or provision of the Service within the City. Without limiting the foregoing, it is agreed that the Franchisee shall indemnify, defend and hold harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively, from all Losses resulting from personal injury to any person (including bodily injury and death), including employees of the Franchisee or of any contractor or subcontractor employed by the Franchisee, or damages to any property, arising out of the acts or omissions of the Franchisee, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this franchise. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of indemnity in this Section. The terms and provisions of this Section are intended to be for the benefit of the City and the Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, the Franchisee shall not be obligated to indemnify the City, its Representative and insurance carriers, individually and collectively, for Losses resulting solely from the negligent or willful misconduct of the City or its Representatives.

(b) The City shall provide the Franchisee with prompt written notice of any claims for which the City or the aforementioned parties seeks indemnification from the Franchisee. The City shall afford the Franchisee the opportunity to participate in and control any compromise, settlement or other resolution or disposition of any such claim or proceeding, and the City will cooperate with reasonable requests of the Franchisee in connection with any such compromise, settlement or resolution or other disposition of such claim or proceeding subject to this Section.

SECTION 5. CITY TAKING PART IN LITIGATION. The Franchisee shall promptly notify the City of any litigation which would affect this franchise. To the extent allowed by applicable law, the City shall have the right to take part, by intervention or otherwise at its option and at its sole cost, in any suit, action, or proceeding instituted by or against the Franchisee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of the

Franchisee to do or not to do anything which, by its franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, the Franchisee's title to any facility. The Franchisee shall not object to the City's exercise of such right.

SECTION 6. BOND. Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the City Clerk a corporate surety bond in the amount of Fifty Thousand Dollars ($50,000), both to guarantee the timely construction and full activation of the Franchisee's Telecommunications System and to secure the faithful performance of the Franchisee of all its obligations provided under the franchise. Failure to timely obtain, file, assign and/or maintain said bond at all times at the required amount shall constitute a substantial violation of this Franchise Agreement.

The performance bond shall provide that:

(1) There shall be recoverable by the City, jointly and severally from the principal and surety any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting from failure of the Franchisee to: faithfully comply with the provisions of the franchise; comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due to the City which arises from or by reason of the construction, operation, maintenance or repair of the Telecommunications System.

(2) The total amount of the bond shall be forfeited in favor of the City in the event:

(a) The Franchisee abandons its Telecommunications System at any time during the Term of the franchise or extension thereof or ceases operation of the Telecommunications System for a period in excess of six (6) months not due to an Event of Force Majeure (as defined in Section 13(a)); and/or

(b) The Franchisee assigns the franchise without the express written consent of the City, if such consent is required by the terms of this franchise, which consent shall not be unreasonably withheld.

The performance bond required herein shall be in a form satisfactory to the City Attorney. The surety bond shall at all times be maintained at the amount and levels as required in this Section and shall be a continuing obligation for the duration of the franchise and thereafter until the Franchisee has liquidated all of its obligations with the City that may have arisen by reason of the construction, operation or maintenance of the Telecommunications System or breach or termination of the franchise. If the bond is drawn-down for any reason, the bond shall be renewed to the amounts required by the City.

The City shall notify the Franchisee in writing and allow the Franchisee thirty (30) days to cure, unless such time to cure is extended by the City Attorney, before calling the surety bond.

SECTION 7. INSURANCE REQUIREMENTS. On the Effective Date of this Franchise Agreement, Franchisee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full Term of the franchise, at the expense of Franchisee, a commercial general liability insurance policy, including coverage for explosion, collapse and underground, written by a company authorized to do business in the State of Alabama with a rating of at least A or higher, including the City as an additional insured as its interest may appear, protecting the City against liability for claims of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the Telecommunications System by the Franchisee in the following amounts:

(1) Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury and for real property damage.

(2) Five Million Dollars ($5,000,000) general aggregate.

The policy must be on an "occurrence" basis.

The Franchisee shall also file with the City Clerk a certificate of insurance for a commercial automobile liability insurance policy written by a company authorized to do business in the State of Alabama with a Best Rating of at least A or higher, covering all owned, non-owned, hired and leased vehicles operated by Franchisee, with a combined single limit of One Million Dollars ($1,000,000) each accident for bodily injury and property damage.

The Franchisee shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the Term of the franchise, workers compensation coverage in compliance with the statutory requirements of the State of Alabama and employers liability with a limit of One Million Dollars ($1,000,000) each accident/disease/policy limit.

The Franchisee shall maintain, during the course of this Agreement, Commercial Umbrella or Excess Liability Insurance to provide excess coverage above the Commercial Liability, Commercial Automobile Liability and the Employer's Liability coverage of Worker's Compensation with Excess/Umbrella Limits of $5,000,000 per Occurrence and $5,000,000 per Aggregate. The policy must be on an "occurrence" basis.

The commercial general liability and commercial automobile liability insurance required pursuant to this Section shall include the City of Irondale and its officers, employees, board members and elected officials as additional insureds as their interests may appear under this Franchise Agreement and shall be kept in full force and effect by the Franchisee during the Term of the franchise and until after the removal or abandonment of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by the Franchisee incident to the maintenance and operation of the Telecommunications System; provided however, that any fiber optic cable and associated conduits, manholes, poles, wires, cables and other facilities which are provided to the City as part of this Franchise Agreement shall not be removed without the written consent of the City. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this Franchise Agreement. Upon receipt of notice from

its insurer(s), Franchisee shall use commercially reasonable efforts to provide the City thirty (30) days' prior written notice of cancellation of any coverage required herein and shall promptly obtain replacement coverage as required by this Franchise Agreement.

The Franchisee agrees that should any of its Facilities installed pursuant to this franchise be damaged or destroyed or the network be disrupted or damaged by the City, its agents, employees, contractors or subcontractors, the Franchisee shall repair or replace such facilities at its own expense or with the proceeds of the insurance it maintains and shall waive any right, claim or action for damages or other available remedies which it may have against the City, its agents, employees, contractors or subcontractors. The foregoing sentence shall not extend to intentional, willful, negligent or malicious damage to the Franchisee's Facilities by City employees. The City will endeavor to use its best efforts to avoid damage to the Franchisee's Facilities, provided that the Franchisee participates in Alabama's 811 program.

During construction or maintenance, if the Franchisee or its employees damage or break any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given promptly to the affected third party and to the City.

SECTION 8. ASSIGNMENT. The Franchisee's interest in this Franchise Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, however, no consent shall be required (i) to transfer or assign this Franchise Agreement to any entity that controls, is controlled by, or is under common control with the Franchisee (with "control" meaning ownership of a majority interest or the actual working control and day to day management of Franchisee), (ii) for a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest in Franchisee, in the Agreement, or in the Telecommunications System in order to secure indebtedness, provided, however, that any lender or creditor in such transaction must obtain the City's consent and approval as provided in this Section for any assignment of rights granted by this Franchise Agreement following such lender or creditor's exercise of any rights against the Franchisee upon the Franchisee's default, and (iii) a transfer of this Franchise Agreement in connection with the assignment, transfer or conveyance carried out as a part of a merger, restructuring or sale or transfer of all or substantially all of the assets of the Franchisee. The Franchisee will provide written notice to the City of any of the foregoing transfers for which the City's consent is not required.

(a) Except as set forth above, the rights granted by this Agreement or any interest therein shall not be assigned or transferred to any other unrelated entity without the express written consent of the City. A written copy of any such proposed assignment for which the City's consent is requested must be filed by the Franchisee with the City. The City reserves the right to be reimbursed by the Franchisee for reasonable costs incurred by it in reviewing the request for the City's consent to such assignment or transfer. Any required consent is to be evidenced by an ordinance of the City Council that fully recites the terms and conditions, if any, upon which consent is given. No assignment or transfer of the Franchise Agreement, as allowed hereunder, shall be effective unless and until the vendee or assignee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such assignment or transfer, accepting the terms of

this Franchise Agreement and agreeing to perform all the conditions thereof, and the City has approved said transfer in writing, which approval shall not be unreasonably withheld. The City shall take action on such request for approval of transfer within sixty (60) days of filing of all information required by this Section. This Section shall not apply in connection with execution of secured financing agreements made by the Franchisee or other transfers for which consent is not required as set forth above. In making a determination of whether to allow an assignment to an unrelated entity for which the City's consent is required, the City may consider any factors that the City deems necessary to make a determination concerning assignment of the Franchise Agreement, including, but not limited to, the following factors:

(1) Experience of the proposed assignee or transferee (including conducting an investigation of proposed assignee's or transferee's service record in other communities);

(2) Qualifications of the proposed assignee or transferee;

(3) Legal integrity of the proposed assignee or transferee;

(4) Financial ability and stability of the proposed assignee or transferee;

(5) If requested by the City, submittals from the proposed assignee or transferee, regarding changes, if any, it intends to make in the operation and maintenance of the Telecommunications System;

(6) The corporate connection, if any, between the Franchisee, and proposed assignee or transferee and/or between the Franchisee and any holder of a like franchise within the City;

(7) Any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of the Telecommunications System; or

(8) Effect of the proposed action on competition.

A copy of the completed sales or transfer agreement, or a functionally equivalent instrument between the Franchisee and proposed assignee or transferee, shall be provided on a confidential basis to the City Attorney for review, so that the City may review the assumption of obligations of the Franchisee by the assignee with respect to the Telecommunications System. After receipt of the request for approval of a proposed transfer or assignment, the City may, as it deems necessary or appropriate, schedule a public hearing before the City Council on the request. Further, the City Council may review the Franchisee's performance under the terms and conditions of this Franchise Agreement. The Franchisee shall provide reasonably requested assistance to the City Council in connection with any such inquiry and, if requested by the City, shall use its best efforts to secure the cooperation and assistance of persons involved in said action. Should the Franchisee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this Franchise Agreement or attempt to do so in violation of the requirements of this Section to obtain prior

written consent, the City may revoke this Franchise Agreement for default and the purported sale, transfer, assignment or conveyance shall be null and void.

(b) The Franchisee shall notify any potential lessee of the necessity of obtaining a separate franchise from the City.

(c) A complete description of the ownership and control of the Franchisee as of the Effective Date in Exhibit 1 attached hereto.

SECTION 9. LOCATION AND CONSTRUCTION OF FACILITIES.

(a) Except as provided in Section 11, Facilities maintained or installed by the Franchisee within the City shall be so located and constructed as not to:

(1) Interfere with usual travel (automotive and/or pedestrian) within the public rights-of-way;

(2) Interfere with the rights or reasonable convenience of property owners who adjoin such public rights-of-way;

(3) Interfere with access to or use of any water or fire hydrant;

(4) Obscure the vision of or interfere with the installation of any traffic control device or traffic or information sign or signal;

(5) Interfere with sight distance established by any ordinance or law;

(6) Obscure the light from any street light;

(7) Cross any water or sewer line except at a ninety degree (90°) angle, except in accordance with a specific permit for such crossing issued by the City;

(8) Damage irrigation, landscaping or trees owned or maintained by the City;

(9) Damage any communications lines owned or maintained by the City.

(b) Placement of Facilities in the paved sidewalk area is prohibited unless authorized by the City.

(c) The City shall have authority to require the Franchisee to remove or relocate any Facility located in violation of this Section at the Franchisee's sole expense. Such relocation or removal shall be completed within thirty (30) days of written notice from the City. In the event that thirty (30) days is not sufficient, the Franchisee may in writing request an additional thirty (30) days to accomplish the relocation. The notice shall prescribe the area where the Facility is located and any other special conditions deemed necessary by the City.

(d) Map of Network. Upon request, the Franchisee shall provide the City with its fiber optics location data in digital files in AutoCAD or other industry standard reasonable formats described in Exhibit 2 hereto that are acceptable to the parties. The City shall provide necessary data to serve as the base for the fiber optics location data. Specific data layers that make up the base shall be defined in discussions with the Franchisee. The fiber optics location data shall be returned to the City on the medium and in the format agreed to by the parties.

(e) After construction of new network facilities or extensions of existing network facilities, as a separate requirement, the Franchisee shall develop as built drawings and maps in AutoCAD or other industry standard reasonable formats as, agreed by the parties, and be provided to the City in that format within ninety (90) days of completing construction of the network.

(f) The Franchisee is under no obligation to build its Facilities to cover the entire City, or to serve any specific persons within the City. The decision of whether to construct its Facilities or what Services to provide is solely within the discretion of the Franchisee.

SECTION 10. WORK IN PUBLIC RIGHT-OF-WAY: RESTORATION OF DAMAGED AREAS.

(a) Whenever the Franchisee excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in effect at the time of such excavation or other work.

(b) Prior to the erection or installation by the Franchisee of any poles, underground conduits, or fixtures for use in connection with the installation, construction, maintenance or operation of the Telecommunications System, the Franchisee shall obtain any required permits in accordance with City code. If poles are erected by the Franchisee, the City requests that it be granted access privileges to those poles for the City's use.

(c) The Franchisee shall not excavate or do other work in any public right-of-way unless the Franchisee has applied for and received a written permit entitled "Street Cut Permit" from the City, or its designee, granting permission for such excavation or other work. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction and the contractor performing the work and any other conditions. If directional boring, trenching or other excavation is the method of construction, detailed plans shall be submitted describing how the work will be performed so as not to damage other lines and conduit located in the right-of-way. If the installation utilizes facilities of another entity, the Franchisee shall provide written authorization for use of such facilities prior to a permit being issued. If the excavation or other work requires closure of a street lane or sidewalk, the Franchisee shall, five (5) working days prior to such closure, submit a Traffic Control Plan to the City for approval. In emergencies involving service outages, the Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(d) The Franchisee shall not open, disturb or encumber, at any one time, any more public rights-of-way than may, in the opinion of the City, be necessary to enable the Franchisee to economically install or repair its Facilities; nor shall the Franchisee permit any public right-of-way

to remain open, disturbed or encumbered for a longer period of time than shall, in the opinion of the City, be necessary.

(e) Immediately upon completion of repairs or installation of any Facility, the Franchisee shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and in no less than ten (10) business days after the completion of repair or installation, unless otherwise approved by the City, the Franchisee shall restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material or other materials or structure damaged in the course of its work to City standards at the Franchisee's sole expense. In the event excavation or disturbance of special sidewalk pavement areas is necessary, the Franchisee shall restore those areas to their preexisting conditions which restoration shall meet City standards. Failures within an area which has been disturbed, excavated or encumbered by the Franchisee which are discovered within twelve (12) months of the restoration or replacement specified herein, shall be the responsibility of the Franchisee pursuant to this provision.

(f) If Franchisee fails, neglects or refuses to refill any trench or excavation or to restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other material or structure or to repair failed materials as specified herein, the City may do all or any part of the work that remains undone at the cost or expense of the Franchisee. Failure of the Franchisee to reimburse the City within thirty (30) days' of the City's presentation of a bill for the reasonable and verifiable costs incurred by the City shall result in denial of any permit request made by the Franchisee until payment is made. City may, at its option, recover such amount from the performance bond required herein.

(g) In any case where a public right-of-way is being excavated, disturbed or encumbered by the Franchisee, the Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this Section shall alter or waive any rights enjoyed by the Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code, Title 37, Section 37-15-1, -11).

(h) Any construction project authorized by a specific permit shall be completed within one year from the date that any necessary permits are issued, provided that the City may allow reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City justifies an extension of the project target completion date.

SECTION 11. USE OF STREETS.

(a) All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation, unless otherwise agreed by the City. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Franchisee may install its Facilities above ground, provided that, at such time as those telephone or electric utility facilities are required to be placed underground by the City, the Franchisee shall likewise place its Facilities underground without

additional cost to the City, unless otherwise agreed by the City. Where not otherwise required to be placed underground by this Franchise Agreement, the Franchisee's Telecommunications System shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the adjacent property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground, private property and utilities. Franchisee's Telecommunications System and Facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such Facilities shall:

(1) Not endanger or interfere with the health, safety or lives of persons;

(2) Not interfere with any improvements the City, County or State may deem proper to make;

(3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;

(4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; or

(5) Not obstruct, hinder or interfere with any gas, electric, traffic control, water or telephone facilities or other utilities located within the City.

(b) Work within Right-of-Way. The closing of any part of a publicly maintained street or right-of-way must be approved by the City Engineer, and may be prohibited during peak travel hours, 7-9 A.M. and 4-6 P.M., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be submitted to the City Engineer at least 10 business days in advance. The notice requirement in this Section may be superseded by the terms and conditions of a subsequent ordinance(s) enacted by the City. All closings are to be protected with signage in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

(c) Removal of City Property. No City property is to be removed from the right-of-way, including signage on utility poles, without proper permission from the City.

SECTION 12. ACQUISITION OF RIGHT-OF-WAY. In acquiring or widening public rights-of-way, the City shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.

SECTION 13. RELOCATION OF FACILITIES.

(a) Wherever a public right-of-way or other public property is being constructed, paved (whether or not such paving is part of a more extensive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), the Franchisee

shall, within ninety (90) days (or such longer period of time as mutually agreed by the parties) after written notice from the City and at no cost (direct or indirect) to the City, remove or relocate any of the Franchisee's facility located within such public right-of-way or public property or perform such work as the City deems necessary for the extension of new facilities. If the Franchisee believes it will be unable to complete the relocation within such ninety (90) day period, the Franchisee shall explain the reasons for its inability in detail, and the City and the Franchisee shall attempt to agree on an alternate schedule, subject, however, to the City's right make a final determination as to such schedule in its reasonable discretion. Nothing in this franchise is intended to eliminate or waive any right the Franchisee may have to reimbursement from a third party under applicable law or the terms of any public funding grant for a project.

(b) Failure of the Franchisee to remove or relocate the Facility to a location approved and permitted by the City within ninety (90) days of the City's written notice (unless otherwise agreed by parties) shall entitle the City to recover liquidated damages from the Franchisee except to the extent said failure is for reasons beyond the Franchisee's control. Any delays in the performance of any obligation of the Franchisee under this Franchise Agreement shall be excused to the extent that such delays are caused by an Event of Force Majeure not within the control of the Franchisee, and any time periods required for performance shall be extended for the period of the Event of Force Majeure. An "Event of Force Majeure" is defined as an act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, pandemic, national emergency, natural disaster, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, or any other cause or occurrence outside the reasonable control of the Franchisee and which by the exercise of due diligence could not be reasonably prevented or overcome. The liquidated damages assessed to the Franchisee, if any, shall be the same as liquidated damages specified in the City's contract with the prime contractor (either as executed at the time of the City's removal or relocation request or which will be executed prior to any construction for the project which requires the relocation or extension of new facilities). If work which requires removal or relocation of Franchisee's facilities is being constructed by a developer, who has submitted a plan which indicates said work will be dedicated to the City, and there is no City contract with a prime to establish the amount of liquidated damages, then the liquidated damages for Franchisee's failure to remove or relocate a facility shall be Two Hundred Fifty Dollars ($250) per diem. If the Franchisee believes it will be unable to complete the relocation within ninety (90) days from receipt of written notice from the City, Franchisee shall explain the reasons for its inability in detail and City and Franchisee shall attempt to agree on an alternate schedule, subject, however, to the City's right to make a final determination as to such schedule and subject to the City's right to liquidated damages. Absent an Event of Force Majeure, the Franchisee shall be responsible to the City under the terms of this Franchise Agreement only for the amount of liquidated damages caused by its own failure to remove or relocate the Facility to a location approved by the City within a timeline provided for herein.

The City may collect any such liquidated damages owed by the Franchisee either through the draw-down of the security required in Section 6, or through other means allowed by law. Unless the delay is excused by the City, the City may immediately request payment of any liquidated damages due to the City by the Franchisee.

SECTION 14. TRIMMING OF TREES AND SHRUBBERY. The Franchisee shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Franchisee to the satisfaction of the City.

SECTION 15. CONSTRUCTION STAFFING. During the franchise Term, the Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans and the construction practices of its subcontractors. The Franchisee shall provide the means for immediate notification and communication by the City with the supervisor in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction. All construction work or any other work performed by the Franchisee, its employees, agents, its duly licensed contractors and sub-contractors shall be in compliance with the plans and specifications approved by the City, and shall be subject to all applicable ordinances, rules and regulations, including licensing and permitting, as well as any licensing and permitting fees charged to all persons and businesses for construction and street opening.

SECTION 16. FRANCHISE NOT A JOINT VENTURE. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 17. FRANCHISEE FEE; CONDITIONS.

(a) As consideration for this franchise, the Franchisee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue (as defined in Section 17(f)) from sales of local Telecommunications Services to Subscribers located within the City, collected by the Franchisee.

(b) In consideration of the agreement of the Franchisee to make such franchise fee payments, the City agrees that no additional business license fee shall be imposed upon or required of the Franchisee by the City during the Term of this franchise. This provision shall not exempt the property of the Franchisee from lawful ad valorem taxes and local improvement district assessments. This provision shall also not exempt the Franchisee from conditions, exactions, fees and charges, which are generally applicable during the Franchisee's real property development or use as required by the City's ordinances.

(c) Commencing the month following the month in which the Effective Date of this franchise occurs, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such franchise fee shall be paid for Gross Revenues received by the Franchisee for the preceding quarter. The Franchisee shall furnish to the City with each payment of franchise fees required by this Section a written statement, showing the amount of Gross Revenue collected by the Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment the City shall issue a receipt to the Franchisee. Nothing herein shall preclude the Franchisee and the City from agreeing to a revised payment schedule.

(d) On or before the first (1st) day of February of each succeeding year, the Franchisee shall submit to the City, a statement of the franchise fee actually due to the City based upon the actual gross revenue for the previous calendar year, together with a check for any amount due from the Franchisee or a statement for any amount due from the City. Such statement will be accorded confidential treatment to the extent permitted by law.

(e) Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. Payment by the Franchisee of any amounts due under this Section shall not be deemed to be a waiver by the Franchisee of any breach of this Agreement by the City occurring prior thereto.

(f) As used in this Section, "Gross Revenue" shall mean all revenues (exclusive of sales tax) collected by the Franchisee from the operation of the Telecommunications System to provide local Telecommunications Services pursuant to this franchise to subscribers within the corporate limits of the City, including, but not limited to:

(1) All revenues from installation service charges directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

(2) All revenues from connection or disconnection fees directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

(3) All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid, and penalties, interest or charges for late payment directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

(4) All revenues from equipment sold or rented to customer upon customer premises directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

(5) All revenues from authorized rental of conduit space located within the corporate limits of the City,

(6) All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from Gross Revenue, and

(7) The value of any free local Telecommunications Services provided by the Franchisee except (i) any discounted or free services required under this Franchise Agreement; (ii) local Telecommunications Services provided as a

credit against non-recurring charges imposed on the Franchisee's customers by a local exchange carrier for converting circuits to the Franchisee.

Notwithstanding the foregoing, Gross Revenue *does not include*: (i) Any tax of general applicability imposed upon the Franchisee; (ii) any regulatory fees or surcharges collected from customers as well as amounts reflecting cost-recovery of regulatory fees and surcharges; (iii) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee to the City; (iv) pass through revenues which are in turn paid to a local exchange carrier for interconnection for long distance service; and (v) revenues that the Franchisee receives from its corporate parent, subsidiary, or affiliate.

(g) Payment of franchise fees under this Section shall in no way limit or inhibit any of the privileges or rights of the City, whether under this franchise or otherwise. Nothing in this Section 17 is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on the Franchisee's business activities under this franchise under applicable law. Except as provided elsewhere in this Franchise Agreement, all payments made by the Franchisee to the City pursuant to this franchise shall be made to the Chief Financial Officer. Nothing in this Franchise Agreement shall be construed to prevent the Franchisee from passing through some or all of the franchise fee to its customers.

(h) Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of Gross Receipts, bartering, or any other means which evade the actual collection of revenues for business pursued by the Franchisee are prohibited and may constitute a default of this Franchise Agreement.

(i) If as a result of such audit or any other review, the City determines that the Franchisee has underpaid its franchise fees by ten percent (10%) or more for any twelve (12) month period, then in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable and verifiable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants. The City may collect the costs associated with such audit or review either through the draw-down of the security required in Section 6, or through other means as allowed by law.

If as a result of such audit or other review, the City determines that the Franchisee has underpaid its franchise fees for any twelve (12) month period, then the Franchisee shall pay interest on such underpayment at the rate of ten percent (10%) interest or prime plus two percent (2%), whichever is greater. The underpayment and interest thereon may be collected by the City through the drawdown of the security required in Section 6, or through other means as allowed by law.

SECTION 18. ADDITIONAL BENEFIT TO THE CITY. In addition to any franchise fee collected pursuant to Section 17 of this Agreement, the Franchisee shall provide fiber and facilities to the City's governmental and institutional facilities as follows; provided however that: (i) the City must, within sixty (60) days of the Effective Date, notify Franchisee in writing of the specific locations where it would request fiber and facilities so that Franchisee can include that

information in its pre-construction engineering work, and (ii) the City waives any right to make further requests after that deadline unless Franchisee in the future notifies the City that it is reengineering portions of its deployment in the City:

(a) Within ninety (90) days after the City's written request for the same, Franchisee shall provide to the City without recurring rental, use or maintenance charges (collectively, "Recurring Charges") solely for its noncommercial telecommunications purposes, two (2) dark fiber pairs (four (4) fibers) in all City rights-of-way where Franchisee deploys at least 288 fiber strands ("backbone network"), whether underground or aerial (the "City Fibers") in up to ten (10) miles of Franchisee's network (i.e. a total of forty (40) fiber miles) within the City limits. The City may divide the dark fiber pairs within the backbone network as it determines to best serve the City's facilities, but each division must include at least two (2) fibers. Franchisee shall not be entitled to offset against Gross Revenues the amount of any Recurring Charges associated with the provision of the City Fibers as set forth herein.;

(b) Franchisee and City shall meet periodically during the 60-day period described in Section 18 above to review Franchisee's network construction plans so that the City can determine the routes to be constructed by Franchisee along which the City desires construction of the Conduit System. City is not obligated to commission construction of the Conduit System along all of Franchisee's routes. Franchisee is not obligated to construct any portion of the Conduit System along any route, street, or pathway other than the routes that Franchisee determines, in its sole discretion, to construct for itself. Franchisee shall create a maximum of six (6) splice points at the request of the City among existing Franchisee access points. The City shall have its own handhole for such splice points, so the City's use of and connection to the City Fibers is separate and apart from Franchisee's Telecommunications System. The City shall reimburse Franchisee for Franchisee's costs for any splice points requested by the City beyond six (6). Franchisee shall perform all splicing of City lateral cables to the City Fibers. The City shall provide Franchisee with at least ninety (90) days' prior written notice of the need to splice to the City Fibers.

(c) Franchisee agrees that the cost of any routine maintenance of the City Fibers shall be borne by Franchisee, and Franchisee shall perform such routine maintenance on the maintenance schedule for Franchisee's Telecommunications System. To arrange for non-routine maintenance, the City will provide at least sixty (60) days' prior written notice to Franchisee that such maintenance is required and will pay or reimburse Franchisee for the cost thereof. Notwithstanding the foregoing, however, the City shall pay only actual incremental labor costs to Franchisee to repair the City's share of dark fibers within any cable that is damaged as the result of any natural disaster or casualty other than normal wear and tear. Nothing in this subsection (c) shall supersede the provisions of this Agreement relating to the relocation of equipment at Franchisee's expense in the event of a City project.

(d) Franchisee acknowledges that the City has the right to connect its own equipment to the City Fibers to be provided hereunder for internal non-commercial municipal purposes, and to make full use at no Recurring Charges to the City of the fibers to be dedicated to the use of the City hereunder.

(e) The City recognizes that Franchisee's agreements, if any, to occupy rights-of-way or for pole attachments may be subject to the control of third parties who may require Franchisee to relocate its cable. In the event of such required relocation by Franchisee that impacts the City Fibers, Franchisee shall provide notice thereof to the City as soon as reasonably possible. Franchisee shall provide replacement dark fibers to the City in any Franchisee replacement cable as soon as reasonably possible.

(f) Franchisee acknowledges and agrees that in connection with the assignment or transfer of Franchisee's interests under this Franchise Agreement, any assignee shall be bound by all of the provisions of this Section 18, including without limitation, the requirement to provide the City Fibers at no Recurring Charges to the City.

SECTION 19. REPORTS AND INVESTIGATIONS.

(a) The Franchisee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Franchisee's Telecommunications System in the City in the context of the permitting process.

(b) The City may, at any time, make inquiries pertaining to the Franchisee's operation of its Telecommunications System within the City. The Franchisee shall respond to such inquiries on a timely basis.

SECTION 20. RESERVATION OF RIGHTS. It is hereby reserved to the Franchisee every right and privilege available to the Franchisee under applicable law, and the Franchisee by its execution of this Franchise Agreement, shall not be deemed in any way to waive, relinquish, release or abrogate any of its lawful rights and privileges. Nothing in this Franchise Agreement is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on the Franchisee's business activities under this franchise pursuant to applicable law.

SECTION 21. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this franchise and all rights and privileges of the Franchisee in the event of a material or substantial breach of its terms and conditions including, but not limited to, the following:

(1) The appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Franchisee;

(2) A failure to begin construction of the fiber optics system within twelve (12) months of the effective date of this Agreement;

(3) A failure to provide insurance, bonds, certificates of deposit or letters of credit as required herein;

(3) Permitting the use of its Telecommunications System or Facilities in any manner that would avoid the need for a franchise with the City for the business of another person; or

(4) A failure to operate the Telecommunications System for a period of six (6) months not due to an Event of Force Majeure.

(b) The Franchisee shall not be excused by mere economic hardship, nor by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees. The foregoing notwithstanding, Franchisee may in its sole discretion terminate this Franchise Agreement upon one hundred and eighty (180) days' written notice to the City. Should Franchisee elect to terminate this Franchise Agreement for its convenience, then the City may require Franchisee deed ownership and use of the Facilities to the City or require the Facilities be removed within one hundred and eighty (180) days from the right of way unless otherwise mutually agreed.

(c) The City shall notify the Franchisee in writing of any breach specifying the nature of the breach. The Franchisee shall have thirty (30) days after the date of such notice to come back into compliance (as set forth in Section 34), unless such cure period is extended in writing by the City Attorney. Should the Franchisee fail or refuse to comply with the notice given by the City, the City may consider the franchise in default and pursue remedies as it determines. If the remedy elected by the City is to forfeit and terminate this franchise, the Franchisee may request an appeal of such decision to the Council of the City of Irondale which appeal must be filed in writing with the City Clerk no later than ten (10) days after the date of written notice of forfeiture and termination to the Franchisee. The City Council shall set a public hearing on such appeal within thirty (30) days after notice of appeal is received. Nothing herein shall be construed as a waiver or forfeiture of any right or remedy that either party may have concerning or arising out of this Franchise Agreement, including the right to seek judicial redress for any breach or violation of the terms of this Franchise Agreement.

(d) The Franchisee reserves the right to forfeit and terminate this Franchise Agreement and all rights and privileges to the City hereunder for any reason. If the Franchisee exercises its right to terminate pursuant to Section 21(b), it shall be required to: (i) pursuant to Section 17, submit payment of the franchise fee until such time that the facilities are removed or abandoned and (ii) otherwise cease providing Services, and (iii) either (x) abandon or remove its Facilities from the rights of way at its sole cost and expense, or (y) if the City requests, transfer ownership of the Facilities to the City for the sum of $1.00.

SECTION 22. REMEDIES AND PENALTIES NOT EXCLUSIVE.

(a) All remedies and penalties under this franchise are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee or the City by or pursuant to this Franchise Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee or the City by or pursuant to this Franchise

Agreement shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

(b) For any period of performance or cure under this Agreement, the time period within which the Franchisee is to perform or cure, as the case may be, shall be extended, without liability to the Franchisee, for at least as long as the Franchisee's ability to perform or cure is delayed for reasons beyond the Franchisee's control provided that the Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

(c) Prior to taking any adverse action against the Franchisee or this franchise, the City shall provide the Franchisee with such notice and due process, including a reasonable period of time to cure, as is required by applicable law, but in all cases no less than reasonable notice and opportunity to cure.

SECTION 23. CONTINUING OBLIGATION. In the event the Franchisee continues to operate all or any part of the Telecommunications System after the Term of this Franchise Agreement expires or is terminated, and before any renewal of the franchise by the City, then the Franchisee shall continue to comply with all applicable provisions of this franchise throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this franchise.

SECTION 24. LIMITATION ON PRIVILEGES. All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way and other public ways of the City are not to operate in any way so as to be an enhancement of the Franchise's properties or values or to be an asset or item of ownership in any appraisal thereof.

SECTION 25. CONFIDENTIALITY. To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Franchise Agreement, provided that the Franchisee notifies the City of, and clearly labels, the information which the Franchisee deems to be confidential, proprietary information as such. Such confidential, proprietary information shall include, but not be limited to any customer names and lists, financial information, technical information or maps regarding placement of equipment with the exception of any map(s) attached to the Franchise Agreement, or other information clearly identified as "Confidential" pertaining to Services provided to its customers. Confidential, proprietary information disclosed by the Franchisee to the City shall be regarded as confidential and proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify the Franchisee of such request and allow the Franchisee a reasonable opportunity to defend its information from disclosure. City further agrees to notify Franchisee of any data breach affecting the confidential information of Franchisee, or any loss of such confidential information from any other cause, within seventy-two (72) hours of the discovery of such breach or loss.

SECTION 26. CAPTIONS. The captions given to various provisions of this Franchise Agreement are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

SECTION 27. ENTIRE AGREEMENT. This Franchise Agreement, with its exhibits, comprises the entire agreement between the City and the Franchisee for purposes of this franchise and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof.

SECTION 28. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Franchisee shall, at all times during the Term of its franchise, be subject to the present ordinances, resolutions, rules, regulations, and laws of the City and of the State of Alabama, and to the provisions of any further ordinance, resolution, rule, regulation, or law of the City or of the State of Alabama, so far as they may be applicable.

SECTION 29. ALABAMA LAW GOVERNS. In any controversy or dispute under this franchise, the laws and jurisdiction of the State of Alabama shall apply to the extent such law has not been superseded or preempted.

SECTION 30. NOTICE. Any notice required or permitted under this Franchise Agreement shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier, in either case, and addressed as follows:

To the City:
Mayor James D. Stewart, Jr.
Irondale City Hall
101 20th St S
Irondale, AL 35210
Re: Lumos Fiber Franchise

With copies sent to both of the following email addresses:

Leigh Allison (lallison@cityofirondalc.gov)
April Danielson, City Attorney
Wallace Jordan Ratliff & Brandt LLC
800 Shades Creek Parkway, Suite 400
Birmingham, Alabama 35209
Adanielson@wallacejordan.com

To the Franchisee:
Lumos Fiber of Alabama, LLC
Attn: Ronny Poston, VP - OSP
4100 Mendenhall Oaks Parkway, Suite 300
High Point, NC 27265
Email: Ronny.Poston@lumosfiber.com

With copies to (except for invoices):

Lumos Fiber of Alabama, LLC
Attn: General Counsel

4100 Mendenhall Oaks Parkway, Suite 300
High Point, NC 27265
Email: legal@lumosfiber.com.

or such other address as may be designated in the future in writing by either party.

SECTION 31. EFFECTIVE DATE AND PUBLICATION. After the execution hereof, this franchise shall be published once in a daily newspaper published in the City of Irondale at the Franchisee's expense, and shall not take effect until such publication or thirty (30) days after the Ordinance authorizing this franchise, whichever is later (the later date being, the "Effective Date").

SECTION 32. MODIFICATION. This Franchise Agreement, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

SECTION 33. SEVERABILITY. Should any part, term or provision of this Franchise Agreement be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this franchise.

SECTION 34. RIGHT TO NOTICE AND CURE. Other provisions herein to the contrary notwithstanding, prior to exercising its right to terminate or revoke this Franchise Agreement as provided herein, the City shall first give written notice to the Franchisee setting out the circumstance or basis on which the City has the right to terminate or revoke this Franchise Agreement, and the Franchisee shall have a period of thirty (30) days after the receipt of the notice within which to cure, correct, or resolve the circumstance or basis, and if the Franchisee is successful in the cure, correction, or resolution thereof, then the City shall not exercise its right to terminate or revoke this Franchise Agreement. If the Franchisee has commenced the cure, correction or resolution within thirty (30) days after its receipt of notice, but additional time is necessary to the completion thereof, then Franchisee shall have an additional thirty (30) days or such additional time upon which the parties can agree, not to be unreasonably withheld by either party, to accomplish the cure, correction, or resolution.

(signatures on the following page)

IN WITNESS WHEREOF, the parties have executed this franchise as of the dates set forth below.

CITY OF IRONDALE, ALABAMA,
a municipal corporation

By: _____

Printed Name: James D. Stewart

Its: Mayor

Date:

(signatures continue on the following page)

ACCEPTANCE BY FRANCHISEE

The Franchisee agrees to the provisions as provided in Ordinance No. ___ - _____, By accepting this Agreement, Franchisee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the franchisee and the municipal code and ordinances of the City of Irondale, Alabama.

LUMOS FIBER OF ALABAMA, LLC, a limited liability company

By: _____

Printed Name: _____

Its: Chief Network Officer

Date: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that (1) the Franchisee returned a signed copy of this Franchise to the City; and (2) the Franchisee has presented to the City acceptable evidence of security/bond and insurance as required in this franchise, to wit; (i) File with the City Clerk a corporate surety bond in the amount of Fifty Thousand Dollars ($50,000) (Section 6); and (ii) Provide copies of applicable certificates of insurance naming the City (Section 7).

The effective date of this Franchise Ordinance is: _____

By: _____
Leigh Allison, City Clerk
City of Irondale, Alabama

Exhibit 1

Complete Description of the Ownership and Control of the Franchisee as of the Effective Date:

Lumos Fiber of Alabama, LLC, is wholly owned by Gridiron Fiber License, LLC, which is wholly owned by Gridiron Fiber LLC, which is wholly owned by Trailblazer HoldCo LLC, which is jointly owned by Gridiron Holdco Corp (US) and Merlin Fiber Holdings LLC (US).

Exhibit 2

Data Definition Standards

Conduit Features				
Field Name	**Data Type**	**Required**	**Example**	**Description**
Shape	Geometry	YES		Shape field created from the data layer, needs to be State Plane NAD83 Alabama West or WGS1984
Size	Float	YES	2.348	Diameter of Conduit
Color	Text	YES	Orange	Color of Conduit
Manufacturer	Text	YES	Dura-Line	Conduit Manufacturer
SKU/Barcode	Text	YES	HDP200RTSDR11SWORGBL KOEMPTAISRS96X03500	Product ID
Insert(Y/N)	Text	YES	Y	Whether an insert is present or not
Insert_Type	Text	YES	Tracer Wire / Pull Tape / Fiber Cable	Description of insert if present
Date_Installed	Date	YES	12/12/2018	Date conduit was installed
Segment_Name	Text	No		City naming convention for conduit segment

Handhole Features				
Field Name	**Data Type**	**Required**	**Example**	**Description**
Shape	Geometry	YES		Shape field created from the data layer, needs to be State Plane NAD83 Alabama West or WGS1984
Size	Text	YES	30 x 60 x 30	Handhole Box Size
Manufacturer	Text	YES	Amrocast	Conduit Manufacturer
SKU/Barcode	Text	YES	A60017421APMC13	Product ID
Material_Type	Text	Yes	Polymer / Concrete	Handhole material make-up
Date_Installed	Date	YES	12/12/2018	Date handhole was installed
Handhole_Name	Text	No		City naming convention for handholes